

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DENNIS ALBA,

Case No. 2:21-cv-01899-GMN-DJA

Petitioner,

V.

ORDER

UNITED STATES OF AMERICA, et al.,

Respondents.

Petitioner Dennis Alba, a *pro se* Nevada prisoner, has not properly commenced this habeas action by either paying the standard \$5.00 filing fee or filing an application for leave to proceed *in forma pauperis* (“IFP”). He submitted a Petition for Writ of Habeas Corpus (ECF No. 1-1) under 28 U.S.C. § 2241, but he did not pay the \$5 filing fee or submit an IFP application.

Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5.00 filing fee is required to initiate a habeas action in a federal district court. The court may authorize an indigent prisoner to begin a habeas action without paying the \$5 fee if he or she submits an IFP application on the approved form and includes three specific documents: (a) the prisoner's financial declaration and acknowledgement showing an inability to prepay fees and costs, (b) a financial certificate signed by the prisoner and an authorized prison official, and (c) a copy of the prisoner's account statement for the six-month period prior to filing. 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2.

Petitioner will have 45 days from the date of this order to either pay the \$5 filing fee or submit a complete IFP application with all required documentation.

Turning to the petition, Petitioner submitted his petition (ECF No. 1-1) on the wrong form. A *pro se* petitioner is required to file his petition for writ of habeas corpus under 28 U.S.C. § 2254 on the court's approved form. *See LSR 3-1; Habeas Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts.* Petitioner filed his petition under 28 U.S.C. § 2241. However, he is in custody pursuant to a state court judgment of conviction, so the only

proper basis for his claims is 28 U.S.C. § 2254. *See White v. Lambert*, 370 F.3d 1002, 1005–07 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546, 555 (9th Cir. 2010) (en banc). The form is important as it provides the Court with necessary information to conduct preliminary review of the petition. Accordingly, Petitioner must, within 45 days of the date of this order, file an amended petition for habeas corpus relief on the Court’s form.¹ In doing so, Petitioner is advised to follow the instructions on the form and to refrain from lengthy legal or factual argument.

Further, Petitioner has not named a proper respondent. Petitioner has named the United States of America as the Respondent. That is incorrect.

Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts states that, when a petitioner is “in custody under a state-court judgment, the petition must name as respondent the state officer who has custody.”² Failure to name the proper respondent strips the district court of personal jurisdiction. *Smith v. Idaho*, 392 F.3d 350, 354 (9th Cir. 2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996).

As such, Petitioner is instructed to file an amended petition that names the correct respondent.

Petitioner must clearly title the amended petition as such by writing the word “AMENDED” immediately above “Petition for a Writ of Habeas Corpus” on page 1 in the caption, and he must place the case number, 2:21-cv-01899-GMN-DJA, in the designated space. Under Local Rule 15-1, the amended petition must be complete in itself without reference to previously filed papers. Thus, the claims and allegations that are stated in the amended petition will be the only matters remaining before the Court. Any claims or allegations that are left out of the amended petition or that are not re-alleged will not be considered.

¹ Petitioner at all times remains responsible for calculating the applicable statute of limitations. By ordering Petitioner to amend his petition, the Court makes no finding or representation that either the original or amended petition will be considered timely.

² This is typically the warden of the prison or detention facility. However, the Court expresses no opinion as to the proper respondent in this context. Cf. Habeas Rule 2(b), Advisory Committee Note to 1976 Adoption.

1 **IT IS THEREFORE ORDERED:**

2 1. The Clerk of Court is instructed to MAIL Petitioner (i) a blank form petition for a writ
3 of habeas corpus pursuant to 28 U.S.C. § 2254 with instructions, and (ii) a blank form
4 Application to Proceed *in Forma Pauperis* (“IFP”) for incarcerated litigants with
5 instructions.

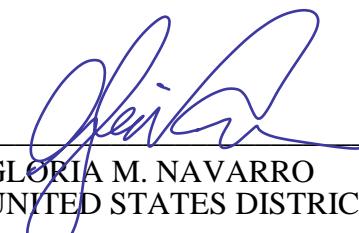
6 2. Within 45 days of the date of this order, Petitioner must file a complete IFP application
7 along with (i) a financial certificate executed and signed by the petitioner and an
8 authorized prison official, (ii) a financial acknowledgement executed and signed by the
9 petitioner, and (iii) a statement of his inmate trust account for the six-month period
10 prior to filing.

11 3. Alternatively, Petitioner will pay the \$5 filing fee within 45 days.

12 4. Petitioner must file an amended petition on the Court’s form within 45 days. Petitioner
13 must clearly title the amended petition as such by writing the word “AMENDED”
14 immediately above “Petition for a Writ of Habeas Corpus” on page 1 in the caption,
15 and he must place the case number, 2:21-cv-01899-GMN-DJA, in the designated space.

16 5. Petitioner’s failure to comply with this Order by (a) filing an amended petition, and
17 either (b) submitting a complete IFP application, or (c) paying the filing fee within 45
18 days will result in the dismissal of this action without prejudice and without further
19 advance notice.

20 DATED: November 9, 2021



21

22 GLORIA M. NAVARRO
23 UNITED STATES DISTRICT JUDGE